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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████
██████
██████████████████

DECISION
Case #: FCP - 203626

PRELIMINARY RECITALS

Pursuant to a petition filed on November 2, 2021, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin First, Inc regarding Medical Assistance (MA), a hearing was held on December 16, 2021, by telephone.

The issue for determination is whether the Managed Care Organization (MCO) correctly denied the petitioner's request for maintenance on his modified vehicle for March 2020.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████████████

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: ██████████, Lead Supv.
Care Wisconsin First, Inc
PO Box 14017
Madison, WI 53708-0017

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Ozaukee County. He is enrolled in the Family Care Program (FCP). Care Wisconsin First, Inc. is his MCO.

2. At least as of January 2020, petitioner began requesting the MCO pay for the maintenance on his vehicle's modifications.
3. On September 2, 2020, the petitioner submitted a formal request to the MCO to pay for maintenance on his vehicle modifications, including a wheelchair lift, seat lift, hand controls and tilt for cab to open.
4. On September 28, 2020, the MCO issued a Notice of Action to the petitioner informing him that it had denied his request for maintenance on his vehicle modifications.
5. On November 5, 2020, the petitioner filed a grievance.
6. On February 10, 2021, a grievance hearing was held. On February 11, 2021, the MCO issued a written notice to the petitioner informing him that the denial of his request was upheld by the grievance committee.
7. On February 16, 2021, the petitioner filed an appeal with the Division of Hearings and Appeals (DHA) and a hearing was held on March 30, 2021 (Case #: FCP – 203626).
8. On April 26, 2021, the DHA issued a Decision in Case #: FCP – 203626. The administrative law judge (ALJ) remanded the matter to the MCO to take all the “administrative steps necessary to rescind its denial of the petitioner’s request and to approve the request for maintenance costs of the Petitioner’s vehicle modifications as a covered service of the Family Care program.”
9. As of June 2021, the petitioner had not received reimbursement from the MCO for the March 2020 payment he made for the maintenance costs of his vehicle modifications.
10. On August 17, 2021 the MCO issued a Notice of Action to the petitioner informing him that it had denied his request for reimbursement for the March 2020 payment he made for the maintenance costs of his vehicle modifications.
11. On October 6, 2021, a grievance hearing was held and the denial of his request was upheld by the grievance committee. Petitioner filed another appeal with the DHA on November 2, 2021.

DISCUSSION

The Family Care program, which is supervised by the Wisconsin Department of Health Services (DHS), is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The DHS contracts with Managed Care Organizations (MCOs) to deliver the Family Care Program supports and services to eligible individuals through a managed care service delivery model to enrollees in need of long-term care. The supports and services that are to be covered by the MCO are specified in Addendum VII of the contract.

In this case, the petitioner originally requested that the MCO pay for maintenance for his vehicle modifications every 6 months at a cost of \$69 (\$138/year). The MCO denied the petitioner’s request on the grounds that vehicle maintenance costs are not a covered service. The petitioner appealed therefrom and the ALJ remanded the matter to the MCO to take all the “administrative steps necessary to rescind its denial of the petitioner’s request and to approve the request for maintenance costs of the Petitioner’s

vehicle modifications as a covered service of the Family Care program.” DHA Decision #: FCP – 203626 (4/26/21). When the MCO did not reimburse the petitioner after the remand, petitioner again asked the MCO to pay for the March 2020 bill. The MCO claims that it was never advised of the March 2020 bill until after the matter was remanded to it. The MCO claims that the previous appeal in FCP – 203626 only related to September 2020 and ongoing. The MCO denied the March 2020 bill by a notice of action stating that the request was denied because it was not pre-authorized.

I find the MCO’s action to deny here contrary to the evidence. First, the petitioner clearly presented the March 2020 bill as an issue in the first appeal (FCP – 203626). He provided the appeal letter from that appeal wherein he provided a timeline as to his request for maintenance coverage and his discussions with his care manager at least as of January 2020 and through to July 2020. See Exhibit 2. Second, the ALJ in that appeal framed the issue in her Decision as, “In this case, the Petitioner requested that the MCO pay for maintenance for his vehicle modifications every 6 months at a cost of \$69 (\$138/year).” After the hearing, the ALJ determined that the “matter is remanded to the MCO to take all administrative steps necessary to rescind its denial of the Petitioner’s request and to approve the request for maintenance costs of the Petitioner’s vehicle modifications as a covered service of the Family Care program.” There is no specific language limiting the remand to September 2020, but rather the Decision refers to the *yearly* plan he requested. I add that the very nature of a remanded appeal may require the MCO to pay for services that were not preauthorized.

Petitioner’s testimony in this hearing was credible and consistent that he had been requesting the MCO to pay for the service as early as January 2020. His original appeal letter was made well before he knew he would have to appeal - and grieve - the approximately \$94 reimbursement from March 2020 all over again, corroborates his version of events. In addition, the MCO’s own case notes lead one to understand that the March 2020 reimbursement was part of the plan as well and that he had certainly raised it well before the July 2021 date the MCO now alleges. See Exhibit 1, p. 17, 21 and 32.

I understand that staff turnover with the MCO may have contributed to confusion on its part. However, I find that petitioner sufficiently requested reimbursement from the MCO for the March 2020 bill prior to the original hearing on this issue and was made part of that appeal.

Claim preclusion (formerly known as res judicata) requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as collateral estoppel) requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." Ibid., p. 550.

As I find this issue has already been litigated and decided, the matter is remanded again to the MCO to approve the request for maintenance costs of the petitioner’s vehicle modifications which includes reimbursement for those services in March 2020. As a reminder to the MCO, if they have concerns in the future regarding the parameters of an ALJ’s Order, it may, within 30 days of the date of the Decision, request that the ALJ amend a decision for the purpose of correcting either plain or administrative errors, or as altered conditions may require. Wis. Adm. Code §HA 3.10.

CONCLUSIONS OF LAW

The MCO incorrectly denied the petitioner’s request to reimburse him for the maintenance costs of his vehicle modifications from March 2020.

THEREFORE, it is

ORDERED

That this matter is remanded to the MCO to take all administrative steps necessary to rescind its denial of the petitioner's request and to approve the request for reimbursement for maintenance costs of the petitioner's vehicle modifications from March 2020. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5th Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

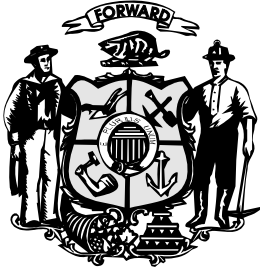
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of January, 2022

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 14, 2022.

Care Wisconsin First, Inc
Office of Family Care Expansion
Health Care Access and Accountability